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## SOME PROBLEMS CONNECTED WITH THE ADMINISTRATION OF THE DRUG END OF THE FOOD-AND-DRUGS LAW.

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SOME of the problems of administering the drug law relate to the question of meeting certain legal constructions of the law, which seem to evade the application of the spirit of the law, if not the letter. One of the cases in point is where a "cancer cure" was sold in Kansas City, Mo. The manufacturer was prosecuted under the food-and-drugs law, under the charge of shipping misbranded drugs, the government contending that the proprietor of the remedy implied on the label of his illegal remedy that *it would cure cancer*, and such an implication was an unwarranted falsehood; therefore the material was to be considered misbranded. When the United States grand jury indicted this "cancer cure," the manufacturer's attorneys filed a motion to quash the indictment on the ground that the food-and-drugs act applies merely to the composition or ingredients of the medicaments, and not to their therapeutic effects. In other words, the defense was that so long as an exploiter does not falsify on the label regarding the composition of his nostrum he may misrepresent with impunity concerning its effects. Strange to say, the position of the manufacturer was sustained by a federal district judge. Judge Philips said, in closing the case: "At no time in the debate in Congress was it proposed to hold the manufacturers of proprietary medicines to criminal liability for misstatements as to the curative value of their products. It is a strained construction to read it into the statutes. Statements on label of a bottle of medicine as to the curative powers, if regarded as 'misbranded,' is an entire misconception of the act. Statements as to curative powers would depend on the opinions of contending experts and upon the uses thereof."

Another case of where the apparent evasion of the law, or the spirit of the law, is made in connection with the question of the application of the letter instead of the spirit, may be illustrated by the following case: A pharmacist orders a well-known drug, and is supplied with an article labeled by that name, which, on examination, is found to be adulterated; but the proof that it is adulterated is not to be found in the official tests laid down in the United States Pharmacopœia. Since this particular adulterant is not considered

under this article in the Pharmacopœia, the offender now claims that, inasmuch as the law contains the phrase "as determined by tests laid down therein" ("therein" meaning in the Pharmacopœia), no other tests can be legally applied to prove that it is adulterated. Now such a defense has not as yet been submitted to a higher court, but we are told that the best legal opinion is to the effect that this defense is good and sufficient. Should this prove to be correct, then the spirit of the law is certainly evaded; for, although the Pharmacopœia does not give a special test for the adulterant, it is nevertheless found to be adulterated, and as the Pharmacopœia cannot practically provide for every possible adulteration, then the failure to do this makes the practice of adulteration possible, and that particular form of adulteration which is not mentioned in the Pharmacopœia may be practiced *ad libitum*. It may be said that a defendant is entitled to the strict interpretation of the act itself, but if such interpretation is going to defeat the very object of the law, namely, to prevent adulteration, then certainly the law should be changed.

The United States Pharmacopœial Committee of Revision is now taking into consideration all such problems, and it has a great task before it to make the food-and-drugs law of real service to the people. But it stands to reason that the law itself, if, by its strict interpretation as it now reads, can protect any form of adulteration, should be changed in such a way that the law should read, in connection with the phrase above alluded to, namely, "as determined by the tests laid down therein," somewhat as follows: "A proof of adulteration may be established if the drug does not respond to the tests for the genuine, authentic material as described in the U. S. P., and if any test of the Pharmacopœia or other chemical tests show the presence of any adulterant." In such a case we have here what we may consider as a positive test, namely, a test which identifies the genuine material, and what we may call a negative test—one which shows the presence of material that is not the genuine article. Either or both of these may be applied to detect the adulterants.